

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 352 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

GAURIBEN K MAHADEVIA

Appearance:

MR AKIL KURESHI WITH MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE A.R.DAVE

Date of decision: 01/08/2000

ORAL JUDGEMENT

(Per R.K. Abichandani, J.)

The Income-tax Appellate Tribunal, Ahmedabad Bench-A, has referred the following two questions for our opinion under Section 256(1) of the Income-tax Act, 1961:-

"1. Whether the Commissioner of Income Tax (appeals) and the income-tax Appellate Tribunal have not erred in law on facts in deleting interest charged under Sec.217(1A) of the Income-tax Act, 1961?"

"2. Whether, the finding of the Commissioner of Income-tax (appeals) as confirmed by the appellate tribunal that the assessee had not committed any default under Sec. 209A(i)(a) of the Act is correct in law and substantiable from the material?"

2 The relevant Assessment Year is 1979-80. The assessee had submitted return of income on 31.08.1999 declaring total income of Rs.57,160/-. The ITO ordered simple interest under Section 217(1A) of the Act. The CIT (Appeals) deleted the interest charged under Section 217(1A) of the Act. In the appeal filed by the Department before the Tribunal, the Tribunal following its earlier order in the case of the same assessee for the Assessment Years 1977-78 and 1978-79 made on 23.6.1983 confirmed the order of CIT (Appeals). It was contended on behalf of the Revenue that since the provisions of Section 217(1A) were attracted in the case of assessee, he was liable to pay interest. It was also argued that the decision of this Court in CIT V. BHARAT MACHINERY AND HARDWARE MART reported in 136 ITR 875 did not apply to the present case because, that was a case where discrepancy had arisen by reason of the fact that the assessee had submitted his return on the basis of the income as disclosed by the books of account maintained by him. The ITO did not accept the correctness thereof and in exercise of powers under the proviso to Section 145(1) of the Act made a deduction of gross profits on the basis of 18% of the total sales. The High Court held that since the difference between the returned income and the assessed income had arisen due to the addition made by the ITO by an estimate of the gross profits under the proviso to Sec. 145(1), no interest could be charged under Section 217(1A) for failure of the assessee to file an estimate under Section 212(3A). It was held that the ITO had misapplied the law in levying the interest under Section 217(1A) of the Act.

3. Under Section 217(1A) it is provided that where, on making the regular assessment, the Income-tax Officer finds that any person who is required to send an estimate under sub-section (4) of Section 209A has not sent the estimate referred to therein, interest shall be payable as specified therein up to the date of the regular assessment upon the amount by which the advance tax paid by him falls short of the assessed tax, as defined in sub-section (5) of Section 215 of the Act. On going through the order of the Assessing Officer, it is clear that the Assessing Officer did not record any finding that the assessee had not sent the estimate referred to in sub-section (4) of Section 209A of the Act. Therefore, in absence of any such finding in the context of the provisions of Section 209A(4) of the Act, there would be no occasion for making an order under Section 217(1A) of the Act. It was contended that the appellate authority had observed that the assessee had not revised the estimate in aforesaid deduction. However, as can be seen from the provisions of Section 217(1A) it was the Income-tax Officer who was to record a specific finding in this regard. It is for this reason that we find that the Tribunal did not commit any error in confirming the order of CIT (Appeals) holding that no interest could be charged under Section 217(1A) of the Act to the assess. The CIT (Appeals) had in the process found that there was no question of the assessee including the additional income for the purpose of filing a revised estimate under Section 209A (4) of the Act because, at the time when the estimate was to be filed, she did not know about the decision of the Tribunal in the earlier case.

In view of the above discussion, we hold that the Tribunal had not committed any error in confirming the order of the CIT (Appeals), deleting the interest charged under Section 217(1A) of the Act and that the assessee did not commit any default u/s 209A(i)(a) of the Act. Both the questions are therefore answered in affirmative against the Revenue and in favour of the assessee. The reference stands disposed of accordingly with no order as to costs.

(mohd)